

## SECTION IV

### SPECIAL TERMS AND CONDITIONS INFORMATION TECHNOLOGY GOODS AND SERVICES

The following is a list of Special Terms and Conditions that may be used at the buyer's discretion in Information Technology IFBs and RFPs as appropriate. The Commonwealth's General Terms & Conditions, any other special terms and conditions as listed in previous sections of this appendix, and any specific terms developed by the buyer should also be included as needed.

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1. **CERTIFICATION TESTING PERIOD - SYSTEMS:** The system specified in the contract shall be considered ready for testing upon receipt of documentation from the contractor that a successful system audit or diagnostic test was performed at the site demonstrating that the system meets the minimum design/performance capabilities stipulated in the purchase agreement. The \_\_\_\_day testing period shall commence on the next calendar day following receipt of this documentation. Upon request, the procuring agency will provide written confirmation of its acceptance following successful completion of the certification period. Such acceptance shall not be conclusive of complete conformance in all respects to the contract specifications and other requirements, or the nonexistence of potential latent defects.

**When Used:** In solicitations for computer systems requiring the installation of multiple components and configuration prior to system operation. **NOTE:** Specific certification criteria should be stated either in the specification or as a part of this provision.

**CERTIFICATION TESTING PERIOD - HARDWARE:** Equipment ordered herein shall be subject to inspection and a 30-day testing period by the procuring agency. Contractor equipment which is found to not meet the specifications or other requirements of the purchase agreement may be rejected and returned to the vendor at no cost

(including return transportation) by the procuring agency. Unless otherwise notified or mutually agreed, acceptance shall become effective at the end of the 30-day testing period. Such acceptance shall not be conclusive of complete conformance in all respects to the contract specifications and other requirements, or the nonexistence of potential latent defects.

**When Used: In solicitations for computer hardware requiring the integration of multiple components for utilization. Specific certification/performance criteria should be stated either in the specification or as a part of this provision.**

2. **CONFIDENTIALITY (Commonwealth):** The Commonwealth agrees that neither it nor its employees, representatives, or agents shall knowingly divulge any proprietary information with respect to the operation of the software, the technology embodied therein, or any other trade secret or proprietary information related thereto, except as specifically authorized by the contractor in writing or as required by the Freedom of Information Act or similar law. It shall be the contractor's responsibility to fully comply with § 2.2-4342F of the *Code of Virginia*. All trade secrets or proprietary information must be identified in writing or other tangible form and conspicuously labeled as "proprietary" either prior to or at the time of submission to the Commonwealth.

**CONFIDENTIALITY (Contractor):** The contractor assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the agency's written consent. Any information to be disclosed, except to the agency, must be in summary, statistical, or other form which does not identify particular individuals. Contractors and their employees working on this project will be required to sign the Confidentiality statement in this solicitation.

**When Used: Solicitations for commercially developed software that has been patented, copyrighted, otherwise protected by law, or when it is anticipated the vendor may claim that the software contains trade secrets or proprietary information.**

3. **DEFINITION - EQUIPMENT:** As used herein, the terms equipment, product, or system shall include hardware and software (when applicable) and any materials or supporting documentation. Such documentation may include but is not limited to: users' guides, operations manuals with part lists, copies of all applicable warranties, and any other pertinent information necessary for the proper operation and maintenance of the equipment being acquired.

**When Used: In solicitations for hardware and software to assure that the Commonwealth receives all supporting materials needed for utilization and maintenance of the purchased equipment.**

**DEFINITION - SOFTWARE:** As used herein, the terms software, product, or software products shall include all related materials and documentation whether in machine readable or printed form.

**When Used: In solicitations for software to assure that the Commonwealth receives all materials, including source code (when appropriate), supporting documentation, and user's information related to utilization of the software being acquired.**

4. **DEMONSTRATIONS:** By submitting a bid or proposal, the bidder or offeror certifies that the specified equipment is in productive use and capable of demonstration in the proposed configuration. The Commonwealth reserves the right to require bidders or offerors to demonstrate the functionality of proposed equipment to its satisfaction prior to making an award decision. Such demonstration is intended to show that a vendor's products will perform in a completely satisfactory manner and that they will meet or exceed the performance specifications contained in the solicitation. Failure by a vendor to promptly comply with a request for demonstration could result in their bid being rejected. Failure to reject shall not relieve the vendor of its obligation to fully comply with all requirements of the contract.

**When Used: Equipment purchases in which the agency has a concern that proposed equipment may not be currently available or capable of performing as promised.**

5. **EQUIPMENT ENVIRONMENT:** Environmental specifications for any equipment to be delivered under the resulting contract shall be furnished in writing along with the vendor's bid or proposal, should any such requirements be applicable. These specifications must be in sufficient detail to permit all installed equipment to function efficiently from an environmental perspective. Unless otherwise stated in the solicitation, it will be the procuring agency's responsibility to prepare the site at its own expense to meet the environmental specifications provided.

**When Used: For equipment purchases when it is anticipated that the equipment must function in a controlled environment, i.e., a regulated temperature or humidity range, or the absence of electromagnetic interference.**

6. **EXCESSIVE DOWNTIME:** Equipment or software furnished under the contract shall be capable of continuous operation. Should the equipment or software become inoperable for a period of more than 24 hours, the contractor agrees to pro-rate maintenance charges to account for each full day of inoperability. The period of inoperability shall commence upon initial notification. In the event the equipment or software remains inoperable for more than \_\_\_ consecutive calendar days, the contractor shall promptly replace the equipment or software at no charge upon request of the procuring agency. Such replacement shall be with new, unused product(s) of comparable quality, and must be installed and operational within \_\_\_ days following the request for replacement.

**When Used: In solicitations for hardware or software to be used on a continuous basis to support essential activities, and the contractor is responsible for providing full service maintenance.**

7. **LATEST SOFTWARE VERSION:** Any software product(s) provided under the contract shall be the latest version available to the general public as of the due date of this solicitation.

**When Used: For purchases where other than the latest available version of a software package is not acceptable.**

8. **LIMITATION OF USE:** The Commonwealth's right to use computer software developed entirely at private expense may be limited by the contractor as stipulated in this contract. Notwithstanding any provision to the contrary however, the Commonwealth shall have at a minimum: unlimited use of the software on the equipment for which it is purchased; use of the software on a secondary system for backup purposes should the primary system become unavailable, malfunction, or is otherwise rendered inoperable; use of the software at another Commonwealth site should the system be entirely transferred to that location; the right to make a backup copy for safekeeping; the right to modify or combine the software with other programs or materials at the Commonwealth's risk; and the right to reproduce any and all documentation provided such reproduction is for the sole use of the Commonwealth. These rights are perpetual and irrevocable; in the event of any actual or alleged breach by the Commonwealth, the contractor's sole remedy shall be to pursue a monetary claim in accordance with § 2.2-4363 of the *Code of Virginia*.

**When Used: In solicitations which will result in the acquisition of commercially developed software, when the agency intends to use such software to support critical activities or functions.**

9. **MAINTENANCE:** Upon expiration of the specified warranty period and at the Commonwealth's option, the contractor shall provide up to \_\_\_\_\_ additional one-year periods of on-site maintenance (including labor, parts, and travel) at the prices set forth in the pricing schedule. Maintenance shall not include external electrical work, providing supplies, and adding or removing accessories not provided for in the contract. Maintenance shall also not include repairs of damage resulting from: acts of God, transportation between state locations, negligence by state personnel, or other causes not related to ordinary use in the production environment in which installed. Each successive year of maintenance may be ordered by the Commonwealth in writing at least \_\_\_ days prior to expiration of the existing maintenance period.

**When Used: In solicitations for computer hardware and software, when maintenance services beyond the basic warranty period are desired, and such extended maintenance service is included in the solicitation's pricing schedule. This clause should be used in conjunction with one of the "service period" clauses. NOTE: The specific maintenance requirements or duties must be stated either in the specifications or as a separate condition of the contract.**

10. **NEW EQUIPMENT:** Unless otherwise expressly stated in this solicitation, any equipment furnished under the contract shall be new, unused equipment.

**When Used: For purchases where used, reconditioned, or remanufactured equipment and components are not acceptable.**

11. **OPERATIONAL COMPONENTS:** Unless otherwise requested in the solicitation, stated equipment prices shall include all cables, connectors, interfaces, documentation for all components, and any other items necessary for full systems operation at the user site. This does not include consumable supplies such as paper, tapes, disks, etc., unless such supplies are expressly identified in the pricing schedule.

**When Used: For system purchases requiring incidental hardware for the interconnection of system components.**

12. **OWNERSHIP OF INTELLECTUAL PROPERTY:** All copyright and patent rights to all papers, reports, forms, materials, creations, or inventions created or developed in the performance of this contract shall become the sole property of the Commonwealth. On request, the contractor shall promptly provide an acknowledgment or assignment in a tangible form satisfactory to the Commonwealth to evidence the Commonwealth's sole ownership of specifically identified intellectual property created or developed in the performance of the contract.

**When Used: For purchases of software or applications development services which result in deliverables that were developed to specifically meet the state's performance requirements, or when state employees will participate in the creation or invention of any copyright or patentable material.**

13. **PRODUCT SUBSTITUTION:** During the term of any contract resulting from this solicitation, the vendor is not authorized to substitute any item for that product and/or software identified in the solicitation without the prior written consent of the contracting officer whose name appears on the front of this solicitation, or their designee.

**When Used: Purchases where the vendor will be responsible for maintenance after the sale, and the agency desires to protect against item substitutions.**

14. **QUALIFIED REPAIR PERSONNEL:** All warranty or maintenance services to be performed on the items specified in this solicitation as well as any associated hardware or software shall be performed by qualified technicians properly authorized by the manufacturer to perform such services. The Commonwealth reserves the right to require proof of certification prior to award and at any time during the term of the contract.

**When Used: In solicitations for hardware or software when the performance of warranty/maintenance must be performed by qualified personnel so as not to invalidate any warranty or support provided by the product manufacturer.**

15. **RELOCATION OF EQUIPMENT:** Should it become necessary to move equipment covered by the contract to another location, the Commonwealth reserves the right to do so at its own expense. If contractor supervision is required, the Commonwealth will provide prior written notice of the move at least thirty (30) days in advance, in which case the contractor shall provide the required services and be reasonably compensated by the Commonwealth. Both the compensation to be paid and any adjustment to the maintenance terms resulting from the move shall be as mutually agreed between the parties. Regular maintenance charges shall be suspended on the day the equipment is dismantled and resume once the equipment is again certified ready for operational use.

**When Used: In solicitations for the acquisition of major computer components or systems for which the contractor is normally the sole provider of maintenance services.**

16. **RENEWAL OF MAINTENANCE:** Maintenance of the hardware or software specified in the resultant contract may be renewed by the mutual written agreement of both parties for an additional \_\_\_\_ one-year period(s), under the terms and conditions of the original contract except as noted herein. Price changes may be negotiated at time of renewal; however, in no case shall the maintenance costs for a succeeding one-year period exceed the prior year's contract price(s), increased or decreased by more than the percentage increase or decrease in the \_\_\_\_\_ category of the CPI-W section of the US Bureau of Labor Statistics Consumer Price Index, for the latest twelve months for which statistics are available.

**When Used: In solicitations for hardware or software where extended maintenance beyond the warranty period is not included in the pricing schedule, but the agency wishes to retain the option to acquire such maintenance services with a pre-established cap on the future cost of such services.**

17. **REPAIR PARTS:** In the event that the performance of maintenance services under the contract results in a need to replace defective parts, such items may only be replaced by new parts. In no instance shall the contractor be permitted to replace defective items with refurbished, remanufactured, or surplus items without prior written authorization of the Commonwealth.

**When Used: In solicitations for computer hardware that require maintenance after the sale, and the agency wishes to have defective parts replaced only by new parts.**

18. **SERVICE PERIOD (EXTENDED):** Due to the criticality of the applications for which the equipment and/or software is purchased, the contractor shall provide 24 hours a day, 7 days a week, maintenance support, including state holidays.

On-site response time shall be within \_\_\_\_ hours following initial notification. All necessary repairs or corrections shall be completed within \_\_\_\_ hours of the initial notification.

**When Used: In solicitations for hardware or software when it is essential that the equipment remain in continuous operation due to the criticality of the process or function for which it was obtained.**

19. **SERVICE PERIOD (ROUTINE):** Contractor shall provide 24 hour toll-free phone support with a \_\_\_\_ hour return call response time. On-site maintenance services shall carry a \_\_\_\_ hour response time following initial notification and be available during the normal working hours of 8 A.M. to 5 P.M. Monday through Friday, excluding state holidays. All necessary repairs or corrections shall be completed within \_\_\_\_ hours of the initial notification.

**When Used: In solicitations for hardware or software which require regular maintenance support but which are not of such a critical nature as to require expeditious response times or after hours support.**

20. **SERVICE REPORTS:** Upon completion of any maintenance call, the contractor shall provide the agency with a signed service report that includes, at a minimum: a general statement as to the problem, action taken, any materials or parts furnished or used, and the number of hours required to complete the repairs.

**When Used: In solicitations requiring maintenance services when the agency intends to maintain detailed service records. This clause should always be included in any solicitation where maintenance is to be performed on a time and materials basis.**

21. **SOFTWARE UPGRADES:** The Commonwealth shall be entitled to any and all upgraded versions of the software covered in the contract that becomes available from the contractor. The maximum charge for upgrade shall not exceed the total difference between the cost of the Commonwealth's current version and the price the contractor sells or licenses the upgraded software under similar circumstances.

**When Used: In solicitations for the purchase of computer software when the agency desires the opportunity to acquire future upgrades as they become available, and the availability of upgrades is not a condition stated elsewhere in the contract.**

22. **SOFTWARE DISPOSITION:** Unless otherwise instructed by the contractor, the Commonwealth shall render unusable all copies of software acquired under the contract within thirty (30) days of termination of its license, except that the Commonwealth does reserve the right to retain one copy of the software for archival purposes when appropriate.

**When Used: In solicitations for software when it is anticipated that the software license will only be maintained for a limited period of time.**

23. **SOURCE CODE:** In the event the contractor ceases to maintain experienced staff and the resources needed to provide required software maintenance, the Commonwealth shall be entitled to have, use, and duplicate for its own use, a copy of the source code and associated documentation for the software products covered by the contract. Until such time as a complete copy of such material is provided, the Commonwealth shall have exclusive right to possess all physical embodiments of such contractor owned materials. The rights of the Commonwealth in this respect shall survive for a period of twenty (20) years after the expiration or termination of the contract. All lease and royalty fees necessary to support this right are included in the initial license fee as contained in the pricing schedule.

**When Used: In solicitations for the purchase of computer software when it is necessary to assure either the availability of program support or the opportunity to provide internal program support.**

24. **TERM OF SOFTWARE LICENSE:** Unless otherwise stated in the solicitation, the software license(s) identified in the pricing schedule shall be purchased on a perpetual basis and shall continue in perpetuity. However the Commonwealth reserves the right to terminate the license at any time, although the mere expiration or termination of this contract shall not be construed as an intent to terminate the license. All acquired license(s) shall be for use at any computing facilities, on any equipment, by any number of users, and for any purposes for which it is procured. The Commonwealth further reserves the right to transfer all rights under the license to another state agency to which some or all of its functions are transferred.

**When Used: In all software procurements when the agency intends to acquire unlimited rights to use computer software for an indefinite amount of time.**

25. **THIRD PARTY ACQUISITION OF SOFTWARE:** The contractor shall notify the procuring agency in writing should the intellectual property, associated business, or all of its assets be acquired by a third party. The contractor further agrees that the contract's terms and conditions, including any and all license rights and related services, shall not be affected by the acquisition. Prior to completion of the acquisition, the contractor shall obtain, for the Commonwealth's benefit and deliver thereto, the assignee's agreement to fully honor the terms of the contract.

**When Used: In solicitations for commercial software when it is necessary to maintain continuity of support even in the event of sale or transfer of rights to another party.**

26. **TITLE TO SOFTWARE:** By submitting a bid or proposal, the bidder or offeror represents and warrants that it is the sole owner of the software or, if not the owner, that it has received all legally required authorizations from the owner to license the software, has the full power to grant the rights required by this solicitation, and that neither the software nor its use in accordance with the contract will violate or infringe upon any patent, copyright, trade secret, or any other property rights of another person or organization.

**When Used: All solicitations for the procurement of computer software for the purpose of assuring the agency only acquires software from an entity legally authorized to market it.**

27. **WARRANTY AGAINST SHUTDOWN DEVICES:** The contractor warrants that the equipment and software provided under the contract shall not contain any lock, counter, CPU reference, virus, worm, or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither it, nor its agents, employees, or subcontractors shall insert any shutdown device following delivery of the equipment and software.

**When Used: In solicitations for hardware or software when the agency wishes to protect both its purchase and existing information resources from possible damage or destruction due to computer viruses or other shutdown devices.**

28. **WARRANTY OF SOFTWARE:** The contractor warrants the operation of all software products for a period of \_\_\_\_ months from the date of acceptance. During the warranty period, the contractor shall provide \_\_\_\_ hour toll free phone support and all patches, fixes, revisions, updates, upgrades, and minor releases to both the software and its supporting documentation. In addition, the contractor shall provide a two hour return call response time and complete all necessary patches/fixes within \_\_\_\_ hours of initial notification.

**When Used: In software purchases where the software will be used to support critical agency activities that cannot endure extended periods of downtime. NOTE: The warranty requirements or duties are not cited and need to either be added to this clause or included in the specification.**

29. **YEAR 2000 COMPLIANT (AND ENABLEMENT) WARRANTY:** The contractor warrants that all software, firmware and hardware product(s) delivered to the Commonwealth of Virginia under any agreement, and which is used in accordance with the product documentation provided by the contractor, shall be 4-digit Year 2000 compliant (or approved enabled). All products shall accurately process all date-change data from start to finish, including, but not limited to, twentieth, twenty-first centuries and leap year calculations.

Any product provided under this Agreement discovered not to be compliant after acceptance shall be corrected by the contractor at no additional cost to the Commonwealth. Failure to correct the deficiency shall subject the contractor to default action.

**INCLUDE THE FOLLOWING PARAGRAPH WHEN THE REQUIREMENT IS FOR A SYSTEM AND/OR CUSTOMIZED SOFTWARE WHICH WILL BE USED IN COMBINATION WITH AGENCY OWNED PRODUCT(S) OR SOURCE(S) OF DATA AND WHICH ARE IDENTIFIED IN THE SOLICITATION:**

The contractor shall not be responsible for correcting any product(s) (e.g., hardware, software, firmware) which were not provided under this agreement or for correcting any previously owned Commonwealth products that are used in combination with the contractor's product(s); however, if this solicitation identifies any product or sources of data to be used in combination with the product(s) delivered under the resulting agreement, the contractor shall be responsible for providing all necessary interface(s) or other appropriate means for assuring that date data output from such other product(s) or source(s) is automatically corrected before being processed by the product(s) or system provided under this agreement.

**When Used:** In all solicitations for software and computer and microprocessor based products, including, but not limited to, control systems, security systems, fire alarm systems, telecommunications systems, etc. **CAUTION:** Should the above paragraph be included, ensure that the agency owned product(s) or source(s) of data are identified in the solicitation. Space must be provided in the pricing schedule for the bidder/offeror to itemize any additional product and/or cost to meet this requirement.

30. **NONVISUAL ACCESS TO TECHNOLOGY:** All information technology which, pursuant to this agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this agreement:

- (i) effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;
- (ii) the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the technology interacts;
- (iii) Nonvisual Access Technology shall be integrated into any networks used to share communications among employees, program participants or the public; and
- (iv) the Technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (i) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, software or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, §§ 2.2-3500 through 2.2-3504 of the *Code of Virginia*.

**When Used:** In all contracts for the procurement of electronic information processing hardware and software, including telecommunications. The head of the using agency may, with respect to nonvisual access software or peripheral devices, approve the exclusion of this clause only to the extent that the cost of such software or devices for the using agency would increase the total cost of the procurement by more than five percent. All exclusions of this clause from any contract must be reported to the Secretary of Technology no later than 30 days after the close of the fiscal year in which the contract was awarded.

